



## The Town of Fenwick Island

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### **REGULAR MEETING OF THE TOWN COUNCIL JANUARY 25, 2019**

#### **MINUTES**

#### **In Attendance**

##### Town Council Members:

Mayor Langan, Vice Mayor Mais, Treasurer Bunting, Secretary Merritt, Council Member Carmean, Council Member Lee, Council Member Williams

##### Staff in Attendance:

Town Manager Tieman, Chief Boyden, Building Official Schuchman, Public Works Supervisor Reed, Finance Manager Gary, Town Clerk Martin

Mayor Langan began the meeting at 3:30 PM.

#### **President's Report**

Mayor Langan expressed his condolences to Secretary Merritt, whose father had recently passed away, and also to Lynn Andrews, who recently lost her husband.

Due to the government shutdown, the approved seismic testing is currently on hold. However, once permits are issued for the testing, the public has 90 days to comment before work begins.

At the Association of Coastal Towns (ACT) Meeting earlier today, beach nourishment financing was discussed. Possibly in 4 years, when the project will be redone in our area, funding may be needed to complete the project.

#### **For Discussion and Possible Action**

##### Town Audit

Mike Kleger from PKS began the presentation by highlighting the Management Responsibility letter and PKS opinion. During the audit, there were no issues found with internal controls and no instances of non-compliance.

Ashley Stern from PKS continued the presentation by noting that GASB 68 was implemented this year. She also highlighted that the Town's unrestricted net position of \$440,000. There was also an increase of \$177,000 in RTT expenses, with GASB 68 being a large part of the expense increase. The General Fund balance remains strong at \$409,409.

The Management Letter was also discussed with recommendations from PKS, to include reducing the number of credits cards, changes to the employee service awards and sick/vacation policy in the personnel manual, account reconciliations, payroll time sheets for the Police Department, and new uniform guidance procurement standards (conflict of interest statements).

Looking forward, in 2020, new fiduciary activity standards will be implemented as well as lease standards on capital leases.

#### Appraisal Services

Vice Mayor Mais noted that at the Finance Committee Meeting earlier today, the Committee reviewed both bids received and recommended Pearson's Appraisal Services.

A MOTION was made by Vice Mayor Mais, seconded by Council Member Carmean, to have Pearson's conduct the Town's revaluation. The MOTION passed unanimously.

#### Budget Revision

Town Manager Tieman noted that at the Dredging Committee Meeting in December, Dr. Maurmeyer presented her proposal for services. Dr. Maurmeyer also suggested that testing of the north channel be conducted by John Hynes.

Secretary Merritt added that with Dr. Maurmeyer's assistance in the process, the Town will be ready to provide the State the plan for dredging.

Council Member Williams asked if this will be the last expenditure for the dredging project. Secretary Merritt responded that it is hard to say, but approving the budget revision for the proposal and testing is a big step forward to proceed with dredging.

A MOTION was made by Vice Mayor Mais, seconded by Council Member Carmean, to approve the budget revision. The MOTION passed by majority, with 6 Council Members voting in favor and with Council Member Williams not voting.

#### Using "Must" Instead of "Shall"

Council Member Williams noted that there is a "gray area" in the Town Code by using the word "shall" since "shall" has different meaning. He is suggesting that any ordinance changes going forward use "must" instead of "shall".

A MOTION was made by Council Member Williams, seconded by Council Member Carmean, to use "must" in all ordinance changes going forward. The MOTION passed by majority 5-2, with Mayor Langan and Treasurer Bunting opposed.

Council Member Williams also suggested that "shall" be defined as "must" in the nomenclature of the Town Code. Town Manager Tieman commented that the Town Solicitor advised against this.

#### Approval of Minutes

A MOTION was made by Treasurer Bunting, seconded by Secretary Merritt, to accept the minutes from the December 7, 2018 Public Hearing. The MOTION passed unanimously.

A MOTION was made by Council Member Carmean, seconded by Vice Mayor Mais, to accept the minutes from the December 7, 2018 Council Meeting. The MOTION passed unanimously.

### **Treasurer's Report**

Treasurer Bunting presented the reports for the periods ending November 30, 2018 and December 31, 2018. He commented that \$45,000 in RTT was received in December.

Council Member Carmean questioned if there were any plans for the \$115,000 in the Dedicated Street Fund. Town Manager Tieman replied that part of the \$115,000 will be used for the microsurfacing project.

Council Member Carmean then asked about the \$54,015 that was taken out of RTT in October since there was no reason given. Finance Manager Gary responded that it was a regular budget transfer that is done every quarter.

Council Member Carmean also questioned what revenue was received from the Fenwick Freeze. Finance Manager Gary replied that all revenue will be reported on the January report.

A MOTION was made by Vice Mayor Mais, seconded by Secretary Merritt, to accept the Treasurer's Report. The MOTION passed unanimously.

### **Town Manager's Report**

Town Manager Tieman submitted her report. She introduced John "Ryk" Rykaczewski, who became the new Beach Patrol Captain effective January 1<sup>st</sup>.

### **Department Reports**

#### **Building**

Building Official Schuchman stated that 235 business licenses were issued in December (160 Outside Contractors licenses, 51 Rental licenses, and 24 Retail Merchant licenses). She added that Royal Farms is scheduled to close beginning February 7<sup>th</sup> for remodeling and will be closed for approximately 4 months.

#### **Public Works**

Public Works Supervisor Reed reported that work on the lifeguard stands is in progress. He added that he has been in contact with DelDOT in regards to the Town sign approval.

Mayor Langan asked if DNREC plans to work on the dune grass planting. Town Manager Tieman replied that she has not heard anything, but will check with DNREC next week to see what their plans are.

#### **Police Department**

Chief Boyden submitted the Police Department Report. He encouraged everyone to turn off their water if they plan to be away from their residences to avoid any broken water pipes.

### **Committee Reports**

#### **Beach**

Carl McWilliams reported that the Fenwick Freeze was a success. There are a few t-shirts still available for sale at Town Hall for \$25.



#### Business Development

No report.

#### Dredging

No report.

#### Environmental

Mary Ellen Langan stated that the Environmental Committee met earlier in the week and began making Earth Day plans. The Earth Day clean-up will be held this year on Saturday, April 20<sup>th</sup>.

Mary Ellen has been in contact with the American Littoral Society in regards to our Town becoming a "Champion of the Coast". Representatives from the American Littoral Society plan to hold a workshop before a future Town Council Meeting.

The next Environmental Committee Meeting will be held on February 21<sup>st</sup> at 2:30 PM.

#### Finance

Vice Mayor Mais noted that the Finance Committee met this morning to review the bids for revaluation.

Also discussed was funding for sidewalks and dredging. Per the recommendation of the Committee, two separate funds will be set up and, with Council's approval, the money received from The Sands permit will be split between both funds and 5% from RTT will be budgeted to be distributed evenly between both funds beginning in the new budget year.

A MOTION was made by Vice Mayor Mais, seconded by Council Member Carmean, to approve creating the two separate funds, distributing the permit fee received from The Sands evenly between both funds, and with the new budget year transfer RTT of 2.5% to each fund. The MOTION passed by majority, with 6 Council Members voting in favor and with Council Member Williams not voting.

Council Member Carmean commented that she felt it was a good idea to have the 2 funds available so the public knows where the money is going.

Council Member Williams stated that he has reservations on how the money is being spent since the bay area is limited to only half of the Town. He is not going against any of this, but hopes nobody goes against funding when we have to pay for beach replenishment. Mayor Langan noted that most residents live on the bay side, so we owe them the duty to take care of the bay. He added that he is sure that the bay side residents would go along with beach replenishment funding. Council Member Carmean added that we are one Town and have to be united.

The next Finance Committee Meeting will be held on March 22<sup>nd</sup> at 10:00 AM. The Committee will be revisiting the mobile parking app as well as the extended parking hours.

### Pedestrian Safety

Council Member Carmean is still waiting to hear back from DelDOT on the cost of the project. She asked DelDOT for consideration to be given due to part of the project being outside Town limits, so the DelDOT planner is doing a block-by-block cost analysis. Most likely, the Town's cost for the project will be about 20%.

Council Member Carmean spoke to John Riley from the County Council. He plans to attend the February Council Meeting in regards to aid for the sidewalk project.

### Planning

No report.

### Technology

Mayor Langan stated that he plans to hold a Technology Committee Meeting soon to discuss parking permit apps.

He also reported that currently the Town has 819 Twitter followers, 4,778 Facebook page likes, and the website had 32,508 unique visitors over the last year. 73.9% of the 32,508 were new visitors to the website. For January alone, there were 1,448 users to the website, with 69.8% being new visitors.

### Charter & Ordinance

Proposed First Reading – Chapter 61 (Building & Utility Construction): 61-3 (Issuance of permits), 61-6 (Duration of permit; failure to comply with time limits), and 61-20 (Wireless Facilities).

A MOTION was made by Vice Mayor Mais, seconded by Secretary Merritt, for the first reading of Chapter 61 (Building & Utility Construction), to be included in the minutes (copy attached).

Bill Weistling noted that the change is clerical, eliminating the Building Committee in the residential district only. Added were that permits will now be approved by the Town Manager, Building Official, or designee assigned by the Town Manager.

Council Member Carmean commented that she is still not clear if the Building Committee is needed for the commercial zone. Council Member Carmean added that in previous discussions, the Town Manager and Building Official both stated they didn't want to be solely responsible for approval in the commercial district. Council Member Lee also added that when the Charter & Ordinance met in the fall, they didn't want to eliminate the number of people to review plans and they actually wanted to add a review board. Bill Weistling replied that the Town has met with an individual planner and will be getting someone to address any concerns.

Council Member Williams questioned what the check system will be for the residential district. He is concerned that one person can approve a residential permit. If there is a mistake in the approved permit, it can't be taken back. He hates to see the Building Committee eliminated. Bill Weistling responded that if the Council would like to keep the Building Committee they can, and the ordinance change does not need to be pursued any further.

Council Member Carmean commented that for commercial projects she would like to keep the Building Committee, or at least a review board, and feels this is a step back and not a step forward. Council Member Williams added if the Town wants to eliminate the Building Committee, then another system needs to be in play.

Council Member Lee stated that the issue is not the residential, but the commercial is the concern.

Council Member Carmean suggested taking back the changes and resubmit next month with the correct wording. Bill Weistling replied that he will resubmit 61-3 next month. Mayor Langan requested that both 61-3 and 61-6 be tabled and readdressed at next month's Council Meeting.

Proposed First Reading – Chapter 81 (Erosion Control): 81-2 (Notice of nonexistent or insufficient protection structure)

A MOTION was made by Vice Mayor Mais, seconded by Secretary Merritt, for the first reading of Chapter 81 (Erosion Control), to be included in the minutes (copy attached).

Bill Weistling noted that the change is eliminating the approval of the Building Committee and instead the Town Manager, along with one individual named by the Council President, will approve.

Council Member Lee questioned if the "one individual" will be an employee. Town Manager Tieman responded that it would be someone with knowledge of erosion control.

The MOTION to approve the first reading of Chapter 81 passed by majority 6-1, with Council Member Williams opposed.

Proposed First Reading – Chapter 61-20, Article IV (Wireless Facilities)

A MOTION was made by Vice Mayor Mais, seconded by Secretary Merritt, for the first reading of Chapter 61-20, Article IV (Wireless Facilities), to be included in the minutes (copy attached).

Bill Weistling suggested to move forward with this section of Chapter 61. The change is eliminating the Building Committee for proposed location of existing cell poles. New poles would still need to be approved by the Town Council.

The MOTION to approve the first reading of Chapter 61-20, Article IV (Wireless Facilities) passed by majority, with 6 Council Members voting in favor and with Council Member Williams not voting.

Proposed First Reading – Chapter 88 (Flood Damage Reduction): 88-14C (Expiration of permit)

A MOTION was made by Vice Mayor Mais, seconded by Council Member Carmean, for the first reading of Chapter 88 (Flood Damage Reduction), to be included in the minutes (copy attached).

Bill Weistling noted that the change is the elimination of the Building Committee member. The Building Official and Town Manager would still monitor the renewal of permits.

Council Member Williams commented that he still would like the Building Committee to be involved.

The MOTION to approve the first reading of Chapter 88 (Flood Damage Reduction) passed by majority 6-1, with Council Member Williams opposed.

Proposed First Reading – Chapter 160 (Zoning): 160-5 (Commercial Zone)

A MOTION was made by Vice Mayor Mais, seconded by Treasurer Bunting, for the first reading of Chapter 160 (Zoning), to be included in the minutes (copy attached).

Bill Weistling noted that the proposed change is to allow an elevator shaft up to 36.5'.

Council Member Carmean commented that she has a question about item #2 and how it is phrased. There should be an insert stating for a 32' building only.

Council Member Lee noted that a variance was given to The Sands and feels the change should not be for all buildings. Council Member Williams agreed, noting that a "hotel zone" should be established for elevator shafts in hotels only. He added that there is no reason to include all buildings in a commercial zone.

Council Member Carmean suggested removing the allowable 36.5' height or fix the language to state "extend to 4.5' over the height of the building".

A revised MOTION was made by Vice Mayor Mais, seconded by Council Member Carmean, to amend the first reading of Chapter 160 (Zoning) to not to exceed 4.5' over the height of the building.

The MOTION to approve the amended first reading of Chapter 160 (Zoning) passed by majority 5-2, with Council Member Lee and Council Member Williams opposed.

Bill Weistling commented that he, along with Town Manager Tieman and Building Official Schuchman, recently met with an engineer on the commercial district layout. The engineer is working on a proposal to present in a workshop to the Town Council to discuss the review of designs and planning standards of the commercial district.

**Old Business**

Council Member Carmean questioned about the median strips. Public Works Supervisor Reed stated that DelDOT has finished spraying the medians and Public Works will put mulch around the plants in the spring.

**New Business**

Vice Mayor Mais asked to be excused from the February Council Meeting.

A MOTION was made by Secretary Merritt, seconded by Council Member Carmean, to excuse Vice Mayor Mais from the February Council Meeting. The MOTION passed unanimously.

### **Upcoming Events and Meetings**

Mayor Langan confirmed the upcoming events and meetings as stated on the agenda, and added the Environmental Committee Meeting on February 21<sup>st</sup> at 2:30 PM.

### **Public Participation**

Bill Weistling, 7 E. Indian Street

Mr. Weistling asked for an explanation on the temporary cell tower to be installed. Town Manager Tieman replied that the temporary tower will be installed in the same location as the cellular on wheels (COW) was installed last year. The temporary tower on wheels (TOW) will be placed until the permanent tower is installed behind Town Hall.

Marlene Quinn, 5 W. Houston Street

To save paper, Ms. Quinn suggested that the public copies of the Council packet be printed double-sided.

Jackie Napolitano, 2 E. James Street

Ms. Napolitano questioned how much money is to be generated from The Sands permit. Vice Mayor Mais stated around \$250,000.

Pam Pridgeon, 1 E. James Street

Ms. Pridgeon suggested for ordinance changes discussed today for the approval of plans/permits, to have someone trained in reviewing plans or hire a qualified outsider to review plans.

Mary Ellen Langan, 5 E. King Street

Ms. Langan asked why Council Member Williams would like to review residential plans. Council Member Williams responded since the Building Committee will no longer be looking at the plans, he would like to review for a check point to see if the plans are in compliance, in particular the height of a building. Ms. Langan then asked what makes Council Member Williams qualified to review plans for compliance. Building Official Schuchman commented that the County is the back up for compliance, while the Town staff does the zoning compliance.

Jackie Napolitano, 2 E. James Street

To add to Ms. Langan's previous comment, Ms. Napolitano questioned what makes the Town Manager qualified to review and approve plans. Bill Weistling responded that now 2 people are looking at the plans: the Building Official and Town Manager. The Town Manager can call in an expert, such as an engineer or planner, with any concerns. Town Manager Tieman added that she will have a checklist for zoning compliance and the County is the code compliance. Building Official Schuchman added that after she talks to the contractor on the phone she double-checks plans for code compliance when they are received. She is confident, after doing her job over 20 years, that the plans are within Town zoning requirements as well.

Buzz Henifin, 48 Windward Way

Mr. Henifin asked if today's audit presentation would be available to the public. Town Manager Tieman responded that it would be posted on the Town's website. Mr. Henifin then asked that



in the future that everyone get a copy of the presentation. Town Manager Tieman replied that she will follow-up with PKS to provide extra copies of the presentation next year.

Richard Benn, 1306 Bunting Avenue

Mr. Benn noted that lights have been place on top of the Fenwick Towers due to the height. By law, our Town needs to see if lights are required on any of our buildings due to height. He feels that lights would distract from his view and he prefers not to look at lights or a wall.

Pam Pridgeon, 1 E. James Street

Ms. Pridgeon questioned what stage The Sands permit is at. Building Official Schuchman replied that she is still waiting for Sussex County approval and should receive the plans and permit application in the next couple of weeks.

Ms. Pridgeon then asked if there was any further information on The Sands rooftop pool and bar. Building Official Schuchman responded that the bar is proposed as an "amenity" by the State. The bar area will not be open to the public, won't be advertised, and will be used by guests of the hotel only. There will be no additional parking for access to the bar. Mr. Buas, the owner of The Sands, will also be signing a letter confirming that he is not to open the bar to the public.

Mike Quinn, 5 W. Houston Street

Mr. Quinn wanted to know if the Town is trying to get rid of the Building Committee. Town Manager Tieman responded just for review of residential dwellings and that two people would now review plans. Mr. Quinn commented that he doesn't think a 2<sup>nd</sup> person is needed for residential permits.

As for the first reading to Chapter 160 that was passed earlier in the meeting, Mr. Quinn questioned if this change is limited to just hotels. Council Member Lee replied no, that it is for any commercial building or any building in the commercial zone.

Denny Pridgeon, 1 E. James Street

Mr. Pridgeon questioned for the 2<sup>nd</sup> person to review plans along with the Building Official, will that person be trained or certified in plan review. Bill Weistling responded that the person could be an expert and could be a contractor, engineer, or even a County Building Official. Vice Mayor Mais added, as discussed earlier, that the County reviews all plans and our Town's Building Official reviews for zoning requirements.

**Adjournment**

A MOTION was made by Secretary Merritt, seconded by Vice Mayor Mais, to adjourn the meeting. The MOTION passed unanimously, and the meeting adjourned at 5:36 PM.